

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

CAZZIE L. WILLIAMS,

Petitioner,

v.

Criminal Action No. **3:12CV795**

ERIC D. WILSON,

Respondent.

MEMORANDUM OPINION

Cazzie L. Williams, a federal inmate proceeding *pro se*, submitted a 28 U.S.C. § 2241¹ petition. (ECF No. 1.) The United States Court of Appeals for the Third Circuit summarized Williams's procedural history as follows:

On April 14, 2003, Williams pleaded guilty to a four-count indictment that charged him with committing four bank robberies in New Jersey. Williams consented to prosecution in New Jersey and then pleaded guilty to a one-count indictment from the Northern District of Ohio, which charged him with committing one bank robbery, and to a two-count indictment from the Middle District of Pennsylvania, which charged him with committing two bank robberies. At his April 14, 2003 appearance, Williams admitted that he robbed a total of 27 banks in New Jersey, Pennsylvania, Ohio, Maryland, and Virginia from September 1998 through September 2002.

United States v. Williams, 151 F. App'x 160, 161 (3d Cir. 2005). The United States District Court for the District of New Jersey ("Sentencing Court") sentenced Williams to 156 months of

¹ That statute provides, in pertinent part:

- (c) The writ of habeas corpus shall not extend to a prisoner unless—
- (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
 - (2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
 - (3) He is in custody in violation of the Constitution or laws or treaties of the United States

imprisonment. *See Williams v. United States*, No. 08–1242 (JAG), 2009 WL 2191178, at *1 (D.N.J. July 22, 2009). On July 22, 2009, the Sentencing Court denied a 28 U.S.C. § 2255 motion filed by Williams. *Id.* (citation omitted).² In his § 2241 Petition, Williams contends that his continuing detention constitutes “‘INVOLUNTARY SERVITUDE’ in violation of the 13th Amendment.[³]” (§ 2241 Pet. 12.) For the reasons set forth below, the action will be DISMISSED for want of jurisdiction.

A. Motions under 28 U.S.C. § 2255 Compared to Petitions under 28 U.S.C. § 2241

A motion pursuant to 28 U.S.C. § 2255 provides the primary means of collateral attack on the imposition of a federal conviction and sentence and must be filed with the sentencing court. *See Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000) (quoting *Cox v. Warden, Fed. Det. Ctr.*, 911 F.2d 1111, 1113 (5th Cir. 1990)). A federal inmate may not proceed under 28 U.S.C. § 2241 unless he or she demonstrates that the remedy afforded by 28 U.S.C. § 2255 “is inadequate or ineffective to test the legality of his detention.” 28 U.S.C. § 2255(e).⁴ For example, “attacks on the execution of a sentence are properly raised in a § 2241 petition.” *In re Vial*, 115 F.3d 1192, 1194 n.5 (4th Cir. 1997) (citing *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996); *Hanahan v. Luther*, 693 F.2d 629, 632 n.1 (7th Cir. 1982)). Nevertheless, the United

² This Court previously has denied a 28 U.S.C. § 2241 petition filed by Williams. *See Williams v. Wilson*, 472 F. App’x 152, 152 (4th Cir. 2012).

³ “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. Const. amend. XIII, § 1.

⁴ “This ‘inadequate and ineffective’ exception is known as the ‘savings clause’ to [the] limitations imposed by § 2255.” *Wilson v. Wilson*, No. 1:11cv645 (TSE/TCB), 2012 WL 1245671, at *3 (E.D. Va. Apr. 12, 2012) (quoting *In re Jones*, 226 F.3d 328, 333 (4th Cir. 2000)).

States Court of Appeals for the Fourth Circuit has emphasized that “the remedy afforded by § 2255 is not rendered inadequate or ineffective merely because an individual has been unable to obtain relief under that provision or because an individual is procedurally barred from filing a § 2255 motion.” *Id.* (citations omitted).

The Fourth Circuit has stressed that an inmate may proceed under § 2241 to challenge his conviction “in only very limited circumstances.” *United States v. Poole*, 531 F.3d 263, 269 (4th Cir. 2008) (citation omitted) (internal quotation marks omitted). The “controlling test,” *id.*, in the Fourth Circuit is as follows:

[Section] 2255 is inadequate and ineffective to test the legality of a conviction when: (1) at the time of conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner’s direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner *was convicted is deemed not to be criminal*; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000) (emphasis added). The Fourth Circuit formulated this test to provide a remedy for the “fundamental defect presented by a situation in which *an individual is incarcerated for conduct that is not criminal* but, through no fault of his [or her] own, [he or she] has no source of redress.” *Id.* at 333 n.3 (emphasis added).

B. Analysis of Williams’s 28 U.S.C. § 2241 Petition

Williams fails to satisfy the second prong of *In re Jones*. *See id.* at 334. Specifically, Williams fails to demonstrate that “subsequent to [his] direct appeal and [his] first § 2255 motion, the substantive law changed such that the conduct of which [he] *was convicted is deemed not to be criminal*.” *Id.* (emphasis added). The conduct of which Williams stands

convicted, bank robbery, remains a crime. Accordingly, the Court will DISMISS Williams's 28 U.S.C. § 2241 Petition for want of jurisdiction.

An appropriate Order shall issue.

Date: 1/21/14
Richmond, Virginia

/s/ J.A.G.
John A. Gibney, Jr.
United States District Judge